

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

611 W. Ottawa Street

Lansing, MI 48909

Phone: 517-335-8658 Fax: 517-335-9512

**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)**

Agency Information:

Department name:

State

Bureau name:

Elections & Campaign Finance

Name of person filling out RIS:

Adam Fracassi

Phone number of person filling out RIS:

517-241-3280

E-mail of person filling out RIS:

FracassiA@michigan.gov

Rule Set Information:

ARD assigned rule set number:

2021-60 ST

Title of proposed rule set:

Disqualification from Ballot Based Upon Contents of Affidavit of Identity

Comparison of Rule(s) to Federal/State/Association Standard

1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

There are no parallel federal rules or standards.

A. Are these rules required by state law or federal mandate?

The rules are not required by state law or federal mandate.

B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

The rules do not exceed a federal standard.

2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

The agency did not compare the proposed rules to standards in other states given that the law, regulations, and associated penalties are specifically tailored to the State of Michigan's ballot preparation and conduct of elections.

The agency is not aware of a similarly situated state that has the same procedure the rule is attempting to regulate.

A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

The agency did not compare the proposed rules to standards in other states given that the law, regulations, and associated penalties are specifically tailored to the State of Michigan's ballot preparation and conduct of elections.

The agency is not aware of a similarly situated state that has the same procedure the rule is attempting to regulate.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

There are no laws, rules, or other legal requirements that duplicate, overlap, or conflict with the proposed rules.

A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

The rules have not been coordinated with other federal, state, and local laws as there are none applicable to the same activity or subject matter.

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, provide a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules.

MCL 24.232(8) does not apply.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, provide either the Michigan statute that specifically authorizes the more stringent rules OR a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rules.

MCL 24.232(9) does not apply.

Purpose and Objectives of the Rule(s)

6. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

At least 15 weeks before the August primary election, candidates filing nominating petitions, qualifying petitions or a filing fee to access the ballot for the August primary must also file an affidavit of identity. MCL 168.558. Candidates must certify they are in compliance with the campaign finance act and have filed or paid all outstanding fines, reports, and late filing fees. Candidates providing false information on the affidavit of identity are ineligible to be certified to the ballot by the filing official. MCL 168.558(4).

The rule clarifies mandatory elements necessary to be certified by the filing official and clarifies what qualifies as an outstanding report preventing ballot access.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

It is not anticipated there will be a change in frequency given that affidavits of identity are mandated to be filed under the Election Law.

B. Describe the difference between current behavior/practice and desired behavior/practice.

Michigan Election Law was amended in 2018 to prohibit certification of a candidate who provides a false statement on the affidavit of identity. The rules are designed to provide uniform guidance to filing officials on what elements of the affidavit of identity are mandatory, and what filings under the campaign finance act qualify as a mandatory filing. The rule also requires the candidate to inform the filing official of prior jurisdictions where the candidate has run for elective office so the filing official may verify the accuracy of the affidavit of identity.

C. What is the desired outcome?

The rules are designed to provide uniform guidance to filing officials on what elements of the affidavit of identity are mandatory, and what filings under the campaign finance act qualify as a mandatory filing. The rule also requires the candidate to inform the filing official of prior jurisdictions where the candidate has run for elective office so the filing official may verify the accuracy of the affidavit of identity.

7. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.

Candidates filing for office file either with the county clerk or the Secretary of State depending on the makeup of the office (districts wholly contained within one county file with the county clerk). Given the recent amendment to the Michigan Election Law, there are ambiguities on what constitutes a false statement on the affidavit of identity, and when outstanding reports, fines, or late filing fees would prevent a candidate from being certified to the ballot. The rules are designed to clarify ambiguities and provide a regulatory framework from processing affidavits of identity.

A. What is the rationale for changing the rules instead of leaving them as currently written?

There are currently no codified rules on the subject matter.

8. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The proposed rules provide protections for the public in all of the following ways: (a) setting forth uniform standards for determining whether a candidate should be disqualified from obtaining ballot access based upon a false statement; (b) providing clerks with guidance on what outstanding reports must be filed prior to the filing of the affidavit of identity; (c) providing for clarity for candidates so they may understand the process and avoid disqualification. These measures are designed to protect the public interest in secure, responsible, and fair elections while at the same time promoting a regulatory environment that is the least burdensome for those required to comply.

9. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

There are no rules that are obsolete or unnecessary that can be rescinded.

Fiscal Impact on the Agency

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

10. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

It is not expected that the promulgation of rules will have a fiscal impact on the agency promulgating the rules or the Department of State.

11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.

No agency appropriation has been made, and no funding source has been provided, as it is not anticipated that the Department of State will have any expenditures associated with the proposed rules.

12. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

The proposed rules are necessary to clarify ambiguities and provide a regulatory framework from processing affidavits of identity. Best practices used by local clerks were utilized in order to develop the proposed rules, and it is not anticipated that they will impose any fiscal burden.

A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.

There are no identified burdens.

Impact on Other State or Local Governmental Units

13. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

There are no estimated increases or decreases in revenues to other state or local governmental units.

14. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.

The County, City, or Township Clerks are responsible for accepting affidavits of identity where they are the filing office for an elected office. There is no change in this responsibility in the proposed rules. The proposed rules would create a uniform regulatory structure and codify best practices currently in use by several jurisdictions. Filing officials would still be responsible for reviewing the affidavit of identity and ensuring that candidates are eligible to qualify for ballot access.

A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.

A filing official would need to review the affidavit of identity, verify that all mandatory elements are present, and verify the candidate does not owe any outstanding fines, late filing fees, or reports under the Campaign Finance Act. Affidavits of identity are already subjected to a retention period under the campaign finance act that the proposed rules would not alter.

15. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.

An appropriation has not been made because additional expenditures associated with the rules are not anticipated.

Rural Impact

16. In general, what impact will the rules have on rural areas?

The proposed rules are not expected to impact rural areas.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

The proposed rules should have no impact on public or private interests in rural areas.

Environmental Impact

17. Do the proposed rules have any impact on the environment? If yes, please explain.

The proposed rules will not have an impact on the environment.

Small Business Impact Statement

18. Describe whether and how the agency considered exempting small businesses from the proposed rules.

The proposed rules do not apply to small businesses.

19. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

The proposed rules do not apply to small businesses.

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

The proposed rules do not apply to small businesses.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.

The proposed rules do not apply to small businesses and will not have an impact on their reporting requirements.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

The agency did not consolidate or simplify the compliance and reporting requirements for small businesses as the proposed rules do not apply to small businesses.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

The proposed rules do not apply to performance, design, or operation standards.

20. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.

The proposed rules do not apply to small businesses.

21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

There are no estimated costs for small businesses as the proposed rules do not apply to small businesses.

22. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

There are no costs of compliance as the proposed rules do not apply to small businesses.

23. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

There are no estimated costs for small businesses as the proposed rules do not apply to small businesses.

24. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

There are no estimated costs for small businesses as the proposed rules do not apply to small businesses.

25. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

There are no estimated costs to the agency for administration or enforcement against small businesses as the proposed rules do not apply to small businesses.

26. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

The proposed rules do not apply to small businesses so there should be no impact on the standards of compliance.

27. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

The agency has not involved small businesses in the development because the proposed rules do not apply to small businesses.

A. If small businesses were involved in the development of the rules, please identify the business(es).

No small businesses were involved because the proposed rules do not apply to small businesses. The Michigan County Clerks Association and the Michigan Association of Municipal Clerks were asked to provide feedback which was incorporated prior to submission.

Cost-Benefit Analysis of Rules (independent of statutory impact)

28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

It is not anticipated that there will be any statewide compliance costs.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

Filing officials will be directly responsible as they are the individuals accepting the affidavit of identity. It is not anticipated that any additional costs, direct or indirect, would be incurred by the filing official.

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

There will be no costs imposed as a result of the proposed rules. It is anticipated that the rules can be followed with the resources currently given to the local clerks.

29. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

It is not anticipated that there will be any actual compliance costs of the proposed rules on individuals.

A. How many and what category of individuals will be affected by the rules?

Candidates running for office will be affected because Michigan Election Law mandates that an affidavit of identity be filed in order to access the ballot. An exact number is unknown as it varies from each election.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

The proposed rules would create a uniform regulatory structure and codify best practices currently in use by several jurisdictions. Candidates will continue to file affidavits of identity, but will be required to notify the filing official of prior jurisdictions in which they have run for office. It is not anticipated this will have a quantitative impact.

30. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

There are no cost reductions for businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.

The purpose of the proposed set of rules is provide a uniform regulatory system that provides consistency in the administration of elections by providing guidance to filing officials and candidates on the mandatory elements of the affidavit of identity and when failing to comply with the mandatory elements will result in ballot disqualification. It is not anticipated that this will have a quantitative impact.

32. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.

The proposed rules will not impact business growth and job creation in Michigan.

33. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

It is not anticipated that individuals or businesses will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

34. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.

The agency relied upon the Department of State's current practice, comments provided by city and township clerks, and current procedures used by filing officials. The agency relied upon agency staff and its regulatory experience to formulate estimates and assumptions and determine the need for the proposed rules.

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., that demonstrate a need for the proposed rules.

The agency relied upon agency staff and its regulatory and administrative experience to determine the impact of the proposed rules. The agency also looked to local elections officials and clerks' associations and relied on their expertise for feedback, and looked to other jurisdictions when determining the existence and extent of the impact of the proposed rules.

Alternative to Regulation

35. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

In order to create a safe, secure, and responsible system, there is no reasonable alternative to achieve the same or similar goals.

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

In order to create a safe, secure and responsible system, there is no reasonable alternative to achieve the same or similar goals.

36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

A regulatory program established by a private third-party is not feasible because the subject of the rules concerns the administration of elections. Michigan Election Law reserves this power solely to the Secretary of State, Bureau of Elections, County, City and Township clerks. The agency is not aware of a private market-based system, as opposed to a state regulatory body for this purposes, utilized in other states.

37. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rules. This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

Due to the nature of regulating the manner of elections, no significant alternatives to reasonable regulation were considered during the development of the proposed rules. Significant provisions of the proposed rules are intended to codify the current practices. The agency solicited feedback from clerks and incorporated many suggestions and revisions into the proposed rules.

Additional Information

38. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

The rules explicitly inform persons of requirements and methods of compliance. Any instructions will be developed if necessary.